

After which this new plaintiff, *Elizabeth Hall*, having abated her suit by her marriage with *John B. Bayliss*, they filed their petition, stating the fact, and praying to have it revived in the mode allowed by the act of 1820, ch. 161; which petition they submitted without argument.

30th October, 1826.—BLAND, *Chancellor*.—It is perfectly obvious, that the fourth, fifth, sixth, and seventh sections of the act of 1820, ch. 161, have done nothing more than to authorize a party to pursue the course therein prescribed in place of a bill of revivor. It is declared, that if a party shall die, "it shall not be necessary to file a bill of revivor," but that this new method may be taken for renovating the suit. The act has neither expressly nor impliedly abrogated the mode of reviving a suit by bill of revivor; but has only given this new method of proceeding as an additional mode of attaining that object, which before could only be effected by a

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13th July, 1821.—KILTY, *Chancellor*.—A motion was made by counsel for a new party to be entered on the death of the complainant, under the act of 1820, ch. 161; and some observations were made by other counsel, with a view to the future practice.

On considering the act, the following decisions are made as to the present motion, which will, of course, serve in future cases.

1st. The application must be by petition or motion, reduced to writing, suggesting the death, and praying to be made a party.

2d. By this act the court is to be satisfied of the death, and of the applicant's being the legal representative; which cannot be done without some proof. The proof required, will be an exhibition of the letters, or an exemplification thereof, or a certificate of the register, under seal, of their having been issued; or an affidavit of the death and administration.

3d. An order will then be passed, by the court, to admit such applicant as a party in place of the deceased.

4th. A minute of the application, and of the order, is to be entered on the docket by the register.

5th. The notice of the admission required by the act shall be given to the opposite party or parties, if residing, or found within the State, by serving an attested copy of the order, or leaving it at their usual place of abode; on proof of which being filed, the new party may proceed in the suit, and not before.

6th. If the opposite party resides out of the State, a form of publication must be prepared, stating briefly the application, and order of admission, with the following conclusion, viz. "It is thereupon ordered, that the said — give notice of his admission as aforesaid, by causing a copy of this order to be published at least once in each of three successive weeks in the —, to the end, that the opposite party may shew cause, if any he hath, to the contrary, on or before the — day of —."

In deciding on the construction of the 4th section of the act, I have considered, that it is not, in any way, affected by the directions in the 7th section; and also, that it is not to be regulated by the practice of the courts of law, under the act of 1795, the words of which are, that the appearance of the executor, &c., shall be admitted to be entered.